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In Nicaragua vs. U.S., the defendant is a no-show

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THE HAGUE, Netherlands — Every morning last week, on of the clerks at the International Court of Justice filled the water glasses at the long oak table assigned to the United States. Every afternoon he found the glasses full and dutifully emptied them.

It was the same with the chairs reserved for the United States, the ones the clerk perfunctorily straightened but where no one ever sat, because no lawyers representing the United States arrived for the hearings in the case Nicaragua vs. the United States.

As has often been the case, the World Court faced an unpromising task. This time it was to act as if the State Department lawyers were there, and to begin weighing evidence offered by Nicaragua against arguments the United States never made.

The Reagan administration, as it promised, boycotted the hearings on Nicaragua's charges that the United States is conducting paramilitary operations against the Sandinista government, in violation of international law.

Deciding not to participate in the case did not, however, end it. But by week's end, the proceedings seemed as much a reminder of the limits of the court as an airing of how Managua sees as aggression what Washington maintains is Central American self-defense.

Since its first meeting in 1946, the court has only rarely managed to fulfill the role assigned it by the United Nations Charter, that of arbiter of international law.

In 39 years, the court has heard 52 cases. In 28 of them, the country accused of wrong-doing asserted the court had no business getting involved. There is nothing the court can do to compel a party to appear, and in practice little it can do to enforce its rulings. The court relies largely on threatening a country with a sense of shame.

That was the best the team of eight lawyers representing Nicaragua could realistically hope for, a ruling that might embarrass the United States. But not one guaranteed to change American policies.

Carlos Arguello, Nicaragua's ambassador to the Netherlands, was head of the team, which included four Americans.

They argued that all violent opposition to the Sandinista government was financed by the Reagan administration and strongly implied that without American support the guerrilla groups known as the "contras" would not exist, and that the Sandinista government would be accepted at home.

"In effect, the commander-in-chief of the United States armed forces is also commander-in-chief of the contra forces," Mr. Arguello told the court. "It certainly violates international law and converts the United States government into a terrorist state."

In Washington the Reagan administration presented its side in a 131-page report whose release U.S. officials acknowledged was timed to coincide with the hearings, and perhaps to deflect the spotlight.

"Far from being innocent victims of outside forces seeking to bring about their overthrow," the report concluded, "the Sandinistas have engaged in a sustained effort to overthrow or intimidate other government's through the threat and use of force."

Most of what was said in court was about impressions rather than facts — along the lines of "I heard that this happened," rather than "I saw it happen myself."

An exception was the testimony of a former CIA analyst, David C. Macmichael, who said his responsibilities for two years at the agency included examining all the evidence of arms shipments from Nicaragua to rebels trying to topple the government of El Salvador.

According to Mr. Macmichael the very best of that evidence was questionable. If his assessment is correct, that would bring into question the reasons the administration cites for supporting the "contras."

He was questioned at length by Judge Stephen M. Schwebel, the only American on the court and who raised many of the questions a team of State Department lawyers might have asked.

Mr. Macmichael did not waver, nor, in his skepticism, did Judge Schwebel, who, alone among the jurists, questioned subsequent witnesses, too.

The hearing took place in a grand, striking setting, the Peace Palace that the Scottish-American industrialist Andrew Carnegie donated to an earlier court in 1913, a building whose style is more that of a late-built chateau or a private club of the immensely rich rather than that of a somber court of international law.

Outside is the United Nations flag, and inside are marble hallways and the paneled courtroom with about 100 leather covered chairs. The clerks dress in tails, the judges in long black robes and sit at a low table covered in dark green fabric.

"The hearing is dramatization," said Paul S. Reichler, who has been legal counsel in Washington for Nicaragua since the Sandinistas came to power in 1979. "The real case is in the documents."

Some of the questions hinted at the limited resources of the court and the extra constraints due to having only one side of the case appear.

Judge Schwebel, instead of having original documents from both sides to compare, or opposing witnesses to balance, cited as his source of information articles in American newspapers.

For a major portion of the proceedings, there was the odd phenomenon of Americans conducting virtually all of the business, as judge, as witness or as lawyer for Nicaragua. And for some of the lawyers, opposing their own country was a disturbing experience.

"It's not something easy to do, or something you do without considering it," said Abram Chayes, a professor of international law at Harvard Law School and who played a major role in preparing Nicaragua's case. "I think we just ought to be accountable to the law. One of our points of pride as Americans is that we are a nation of law and not men."

"I think we would be better off if the United States came out from the bushes and made its case."